

CLASS II PERMIT

16.6 Class II permits for docks authorized by cities and counties that own or otherwise control shoreline property

This rule authorizes issuance of a Class II dock permit to a city or county for docks authorized by a city or county to extend from public land owned or controlled by the city or county. A Class II permit may include all docks and hoists authorized by the city or county on one water body. The Class II dock permit shall require that all docks comply with the standard requirements in 16.3(461A,462A). Class II permits shall include exceptions as needed to provide continuing authorization for docks and hoists that were lawfully installed and maintained before the effective date of certain requirements as set forth in this rule. A dock on a natural lake may extend the greater of 100 feet from the water's edge or far enough so that the outer 80 feet of the dock is in 3 feet of water up to a maximum of 300 feet from the water's edge. These lengths shall be measured from the water's edge when the dock is installed. The city or county authorizing maintenance of a dock and boat hoists shall be responsible for enforcing the standard requirements and length limit. The department reserves authority to determine whether the requirements of 16.3(461A,462A) and the length limit are met upon complaint of a person who claims that a public or private right is adversely affected by a permitted dock. If the department determines that a dock or hoist must be moved or removed from the water body because of an adverse effect, the department shall issue an administrative order to the city or county that is authorizing maintenance or use of the dock and to the person who is maintaining or using the dock. Issuance of the administrative order shall trigger a right of the city or county and the affected person to a contested case. If shoreline property is public land but there is uncertainty concerning the relationship between the authority of the city or county and the authority of the department, the Class II permit shall include a recital concerning the relative authorities of the department and the permittee. Class II permits shall be issued without fee and may be issued for a term up to five years.

Definitions

Artificial lake means all river impoundments and all other impoundments of water to which the public has a right of access from land or from a navigable stream inlet. Examples are Lake Panorama, Lake Delhi, Lake Nashua, and Lake Macbride.

Boat means "watercraft" as defined in Iowa Code section 462A.2(41).

Boat hoist or lift means a structure placed in the water or below the ordinary high-water mark for boat storage, including platforms for storage of personal watercraft. For the purposes of this chapter, a boat hoist that is designed to store multiple small vessels such as personal watercraft or one-person sailboats shall be treated as a single hoist.

Catwalk means a platform no more than four feet wide installed to provide access from a dock to a moored boat or boat hoist.

Commercial dock means a dock used as part of a business, including a dock extending from residential property if one or more mooring spaces at the dock are rented for a fee.

Commission means the natural resource commission.

Common dock means a dock serving two or more adjoining shoreline properties.

Department means the department of natural resources.

Director means the director of the department of natural resources or the director's designee.

Dock means a platform-type structure extending from shoreline property over a public water body, including but not limited to platforms that provide access to boats moored on the water body.

Impoundment means a body of water formed by constructing a dam across a waterway.

Public dock means a dock constructed and maintained to provide public access from public land to a water body.

Public land means land that is owned by the state, a city, or a county or land that has been dedicated for public access to a public water body.

Public water body is a water body to which the public has a right of access.

Shoreline property means a parcel of property adjoining (littoral to) a lake or adjoining (riparian to) a river or other navigable stream.

Slip means a mooring space, usually adjacent to a dock, sometimes accessed by a catwalk.

Water body means a river or other stream, a natural lake, an artificial lake or other impoundment, or an excavated pit.

Standard requirements for all docks

16.3(1) Adverse impacts on aquatic ecosystem. All docks, hoists, slips and related structures shall be located, sized, configured, constructed and installed to limit their adverse impacts on the aquatic ecosystem. In areas of sensitive aquatic habitat, docks and hoists shall be located, configured, constructed and installed to minimize harm to aquatic habitat. Other restrictions may be placed on docks that are in a state protected waters area as necessary to protect the natural features of the designated area.

16.3(2) Adverse impacts on public access for recreational use. A dock shall not be configured to enclose an area of a public water body and create a private water area or otherwise adversely affect public recreational use of the water body. Where walking or wading parallel to the shore below the ordinary high-water mark would be physically practical except for the obstruction created by a dock, the dock owner shall not prevent a person from stepping on or over the dock to bypass the obstruction.

16.3(3) Location and offsets. To the extent practical, a dock and boat hoists shall be placed near the center of the shoreline property frontage and installed perpendicular to the shoreline to maximize offsets from neighboring properties. Each dock, hoist, moored vessel and other permitted structure shall be offset a minimum of 5 feet from an adjoining property line and 5 feet from the projection of a line perpendicular from the shoreline at the common boundary with adjoining shoreline property. A minimum gap of 10 feet shall be maintained between adjoining docks (including "L" or "T" or catwalk segments), hoists or moored boats. Where projection of a line

perpendicular from the shoreline is impractical, it is the intent of this rule that a 10-foot gap be maintained in a manner that is equitable to each adjoining shoreline property owner.

16.3(4) Length. A dock shall not extend farther from the water's edge than the distance necessary for reasonable access to the water body in relation to characteristics of the water body in the vicinity of the dock site and the impacts on the water body and other users. Access to maintain one or more boats in water with a minimum depth of 3 feet shall be considered sufficient access.

16.3(5) Display of 911 address. Each dock owner shall display the 911 address, including the street and city, assigned to the property served by the dock. The owner of a dock authorized by an individual permit shall also display the dock permit number. The information shall be displayed in block letters and numbers at least 1 inch high in a color contrasting with the background, on the water end of the dock, facing away from shore, and shall be plainly visible.

16.3(6) Winter removal. Each dock must be removed from public waters before December 15 of each year and shall not be reinstalled until the following spring unless the removal requirement is waived by a condition of a dock permit or by 16.18(461A,462A).

16.3(7) No enclosure of private docks. Private docks and docks in dock management areas shall not be enclosed by roofs or sides. Hoists may be enclosed by roofs and sides constructed of soft-sided natural fiber or synthetic fiber materials for the purpose of protecting watercraft.

16.3(8) Materials and flotation specifications. Every new floating structure authorized by this chapter shall use flotation methods and devices of a type constructed of low-density, closed-cell rigid plastic foam; high-impact polyethylene fiberglass material; wood products pressure-treated with a product approved by the United States Environmental Protection Agency for aquatic use; or other inert materials to provide flotation. Synthetic (such as plastic or fiberglass) or metal containers not originally manufactured as flotation devices may be used as dock flotation devices if they have been cleaned of any product residue, sealed and watertight, and filled with a closed-cell rigid plastic foam.

16.3(9) Flow of water. All docks shall be constructed and placed in a manner that allows the free flow of water beneath them.

16.3(10) Excavation, fill and aquatic vegetation removal prohibited. No bed material may be excavated or fill placed, and no aquatic vegetation may be removed below the ordinary high-water mark of a water body in association with construction of a dock unless excavation, placement of fill, or aquatic vegetation removal is specifically authorized by a construction permit issued under 571—Chapter 13.

16.3(11) Storage, use, and dispensing of fuel. The storage, use, and dispensing of any fuel on a dock on or over a public water body or adjacent public land shall be in compliance with Iowa Code Chapter 101 and administrative rules that implement Chapter 101.

16.3(12) Electrical service. Any electrical service on or leading to any dock used for storage or dispensing of fuel must comply with the National Electrical Code, latest revision. All electrical service leading to docks shall include ground fault circuit interrupter protection.

16.3(13) Anchoring of river docks. All river docks must be securely anchored to prevent them from becoming floating hazards during times of high river flows. The riparian owner is responsible for

dock retrieval and removal when necessary to prevent or remove a navigation hazard.

16.3(14) Access for inspection. A dock, boat hoist, raft, platform, mooring buoy or any other structure on a public water body may be physically inspected at any time by a representative of the department as needed to determine whether it was placed and is maintained in a manner consistent with the requirements in these rules or with a permit issued under these rules.

Duration and transferability of permits; refund of application fees; suspension, modification, or revocation of permits; complaint investigation; property line location

16.17(1) Duration and transferability of dock permits; administrative fee refunds. Each dock permit shall be issued for a term of five years unless a shorter term is needed due to specified circumstances. The administrative fee paid with an application is nonrefundable unless the application is withdrawn before the department incurs administrative expense in investigating the application. A dock permit is automatically transferable to a new owner of the shoreline property upon request of the new owner.

16.17(2) Suspension, modification, or revocation of permits. A dock permit may be modified, suspended, or revoked, in whole or in part, by written notice served in compliance with Iowa Code section 17A.18, if the director determines that the dock is a hazard to other users of the water body, that a violation of any terms or conditions of the permit has occurred, or that continuation of the permit is contrary to the public interest. Such modification, suspension, or revocation shall become effective upon a date specified in the notice. The notice shall state the extent of the modification, suspension, or revocation, the reasons for the action, and any corrective or preventative measures to be taken by the permittee to bring the dock, structure, or activity into compliance. Within 30 days following receipt of the notice of a revocation or modification, or during the course of a suspension, the permittee may request a hearing in order to present information demonstrating that the alleged violation did not occur or that required corrective and preventative measures have been taken, or to present any other information relevant to a decision as to whether the permit should be reinstated, modified, or revoked. The hearing shall be conducted as prescribed by 571—Chapter 7. After completion of the hearing, a final decision will be made concerning the status of the permit. In the event that no hearing is requested, notices of modification and revocation shall remain in effect, and suspended permits shall be reinstated, modified, or revoked. These procedures are not intended to limit the authority of a department law enforcement officer to issue a citation for a violation of a provision of Iowa Code Chapter 461A or 462A, or a provision in this chapter.

16.17(3) Investigation of complaints. Any person adversely affected by a permitted dock or associated boat hoist may request, in writing, an investigation and a hearing to reconsider the permit. Requests for hearings shall specify adverse effects on the complainant and shall be made in accordance with procedures described in 571—Chapter 7.

16.17(4) Determining property boundaries. An applicant for a permit, a permittee, and an owner of shoreline property adjoining property of an applicant or permittee are responsible for determining the accurate location of common boundaries of their respective properties.

16.18 Exemptions from winter removal requirement. This rule provides for exemptions from the general requirement in Iowa Code

section 462A.27 that nonpermanent structures be removed on or before December 15 of each year. Docks and other structures subject to destruction or damage by ice movement must be removed. Where a dock may be left in ice without damage to the dock, it must have reflective material visible from all directions to operators of snowmobiles, other motorized machines, or wind-propelled vessels lawfully operated on the frozen surface of the water body. Generally, ice damage is greatest on Iowa's rivers and natural lakes. Docks must be removed by December 15 of each year unless they have the required reflective materials and are specifically exempted by a condition of a dock permit or are located in one of the areas listed as follows: artificial lakes; Upper Gar Lake; canals off West Okoboji Lake; Okoboji Harbor; Lazy Lagoon portion of Triboji dock management area; Smith's Bay on West Okoboji Lake; area between the trestle and U.S. Highway 71 bridges on Okoboji lakes; Templar Park on Big Spirit Lake; Venetian Village Canal and Harbourage Inlet on Clear Lake; Casino Bay of Storm Lake; Black Hawk Marina at Black Hawk Lake; and canals off Lake Manawa and Carter Lake. A permit shall not authorize an exception from the winter removal requirement unless the applicant provides adequate documentation that the dock will not be damaged by normal ice movement.

16.19 General conditions of all dock permits. All dock permits, unless specifically excepted by another provision of this chapter, shall include the following conditions of approval:

16.19(1) The permit creates no interests, personal or real, in the real estate below the ordinary high water line nor does it relieve the requirement to obtain federal or local authorization when required by law for such activity. The permit does not authorize the permittee to prevent the public from using areas of the water body adjacent to the permitted structure. However, a lawfully permitted private dock or commercial dock is property of the permittee. Use of the dock is reserved to the permittee and the permittee's invitees, subject to the public right of passage stated in 16.3(2).

16.19(2) A permit is valid only while the permittee has the necessary permissions to use the adjoining shoreline property from which the dock projects.

16.19(3) The permittee shall not charge a fee for use of the dock or associated structure unless: the permit is for a commercial dock; the fee is expressly authorized by the permit; or the permittee is a homeowners association and the fee is for recovery of expenses incurred in providing access to association members.

16.20 Permit criteria for rafts, platforms, or other structures. A raft, platform, or other structure maintained on a public water body requires authorization in a permit. The raft, platform, or other structure may not be placed more than 250 feet from the shoreline, shall be equipped with reflectors that are visible from approaching boats, and shall be subject to the winter removal requirement unless specifically exempted by the permit.

16.12 Initial decision and right of appeal. The decision on an application for a Class II, Class III or Class IV permit shall be made by the department's district law enforcement supervisor or designee except that the district law enforcement supervisor shall issue an initial decision in the form of a permit or a permit denial on a request for an exception under 16.10(461A,462A). If the district law enforcement supervisor decides to deny the permit or to issue a permit with specific conditions that deny the application in part, the written decision shall include notice of the applicant's right to request

a contested case under 571—Chapter 7. If a request for an exception under 16.10(461A,462A) is disapproved by the district law enforcement supervisor, the applicant's request for a contested case may include a request for a variance or waiver under the provisions of Iowa Code section 17A.9A and 571—Chapter 11.

Application forms and administrative fees

16.13(1) The applicant for a Class II, Class III or Class IV permit shall submit to the department a completed application on the applicable DNR dock permit application form. If the applicant for a Class III or Class IV permit is not the owner of the shoreline property from which the dock extends, the applicant shall identify the contractual relationship between the applicant and each property owner and shall submit as part of the application the written consent from each owner. The application form shall be accompanied by accurate plans and drawings as specified on the form. The drawings shall accurately show the size and location of each boat hoist, slip, platform, catwalk, buoy, or other structure to be maintained in front of the shoreline property. Docks in front of non-adjoining shoreline properties on the same water body owned by the same person or legal entity may be included in one application. An application for renewal of a permit for an existing dock and hoists must specifically describe each requested modification. The applicant shall submit an administrative fee with the application. The completed application form and payment shall be submitted to the department's district law enforcement office in the district where the proposed dock is located. The application will be assigned to a conservation officer to investigate.